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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/04/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/804,403

Applicant(s)

STRAND ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on November 1, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28, 41-94, 100-102 and 104 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28, 41-94, 100-102 and 104 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) ✓
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) ✓
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3, 10, 14, 17, 21, 22
- 4) ☒ Interview Summary (PTO-413) Paper No(s) 19 ✓
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. The amendment filed November 1, 2002 (Paper No. 20) has been entered. Claims 29-40, 95-99, 103, 105, and 106 have been cancelled. Claims 1-28 and claims 41-94, 100-102, 104 remain pending in the application. Applicant has requested a number of the pending claims be held in abeyance for filing of a divisional application. These claims are to be examined because they are still pending and are drawn to an elected invention.

Election/Restrictions

2. Applicant's election with traverse of Invention II, Claims 1-28, 41-62, 75-94, 100-102, and 104 in Paper No. 20 is acknowledged. The traversal is on the ground(s) that claims 1-28, 41-62, and claims 100-102 and 104 do not require the presence of cheese. This is not found persuasive because the bag features recited in the claims 75-94, which positively recite cheese, are the same bag features recited in claims 1-28, 41-62, and claims 100-102 and 104. For that reason, the bag structures are not distinct and the search required for claims 75-94 includes a search for the bag features recited in 1-28, 41-62, and claims 100-102 and 104.

3. The requirement is still deemed proper and is therefore made FINAL.

Drawings

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "19" has been used to designate both a "fin structure"

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(e.g., line 17, page 21) and "outer surface" (e.g. the amended paragraph beginning line 20, page 21). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

6. Claims 1,2,4-9,14,15,18,19,75-86,91,92,100, are rejected under 35

U.S.C. 102(b) as being clearly anticipated by May (US 5725312).

7. Regarding claims 1,2,6-9, 14,15,18,19,75-80,82-86,91,92 , and 100, see column 1, lines 37-58 (i.e. May teaches an improvement upon cheese containing bags), column 8, lines 35-48, column 27, lines 48-60, Figure 26 in light of Figures 3,7, 11,19, and column 26, line 30-column 27, line 6.

8. Regarding claims 4,5, 81, see items 320,322 in column 23, lines 30-49.

9. Claims 1,2,6,7-9, 14,15,18-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Boeckmann et al. (US 4846585).
10. See Column 1, line 5 to Column 2, line 18, Column 4, lines 25-40, Figures 1-5.
11. Claims 1, 2,6-9,14,15, 75-80,82-86,91,92,100 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Dobreski (US 5682730).
12. Regarding claims 1,2,75-80,100, see figures 1 and 2 (e.g. opening formed by 28/22 at the opposite end of the bag from fold 20, skirts 26 & 30, lines of weakness 38), column 2, line 27 to column 3, line 14, and column 3, lines 53-58.
13. Regarding claims 6-9,14,15,82-86,91,92 see Figures 1 and 2, column 3, lines 14-16, and column 3, line 53-column 4, line 15.
14. Claims 21, 23, 24,41,42,46,48,49,54,55, 61,101,102 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Thieman et al. (WO 98/45180).
15. Regarding claims 21,23,41,42,46,48,49,54,55,61,101,102, See Figures 7/7a,8 in light of the abstract, Page 4, lines 13-30, and page 6, lines 1-11.
16. Regarding claim 24, see Figure 4.

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over May (US 5725312) as applied to claims 1,2,4-9,14,15,18,19,75-86,91,92,100, above, further in view of Kanemitsu et al. (US 5335997).

19. May teaches the skirt is integral with the fastener structure, but is silent in teaching coupled per se. Kanemitsu et al. , who also teach a reclosable bag with an area of weakness, are relied on as evidence of the conventionality of the fastener being integral with or coupled to a skirt (Abstract, Column 6, lines 26-45). Therefore it would have been obvious to include a coupled skirt since one would have been substituting one means for attaching a skirt for another for the same purpose.

20. Claims 10 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over May (US 5725312).as applied to claims 1,2,4-9,14,15,18,19,75-86,91,92,100, above, further in view of Kinigakis et al. (US 6007246).

21. May is silent in teaching the line of weakness is across predetermined length of web material. Kinigakis et al., who teach a corner opening in a bag, are relied on as evidence of the conventionality of a line of weakness used to access a reclosable bag, that contains cheese, opening wherein the line is across a width and length (Abstract, Figures 8-12, Column 8, lines 9-15) Therefore, extending the line of weakness any particular predetermined dimension would have been an obvious result effective variable of the location of the bag opening since Kinigakis et al. teach a diagonal bag opening has a diagonal line of weakness of a predetermined length and width.

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22. Claims 11-13,16,17, 88-90, 93 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over May (US 5725312).as applied to claims 1,2,4-

9,14,15,18,19,75-86,91,92,100, above, further in view of Hayashi et al. (US 6074097).

23. May teaches a linear area of weakness comprising perforations, but is silent in a non-linear area of weakness as recited in 11-13 and 88-90, scoring as recited in claims 16 and 93, or micro perforations as recited in claims 17 and 94.

24. Hayashi et al also teach reclosable food bags with an area of weakness (Column 20, lines 10-26). Hayashi is relied on as evidence of the conventionality of providing a non-linear area (i.e. not a straight line), as recited in claims 11 and 88 for opening a bag (Column 18, lines 31-40, Figure 10). Hayashi et al. teach the preferred non-linear length and width (e.g. 106 in Figure 10), as recited in claims 12,13,89, and 90, along with micro-perforations as recited in claims 17 and 94, both tear strength and tear control (i.e. the tear follows the same shape as the area of weakness) of the area of weakness is more easily controlled(Column 13, lines 35-Column 14, line 12).

Furthermore, Hayashi et al. teaches, alternatively, perforations or scoring (i.e. grooves), as recited in claims 16 and 93, may alternatively be used (Column 18, lines 31-40, Figure 10).

25. Therefore, once it was known to include an area of weakness in combination with a reclosable bag, to select any particular type of weakness such as perforations, micro perforations, or scoring , linearity, and location on the web, would have been an obvious design choice depending on the desired variable of the desired tear strength and tear control, since Hayashi et al. teach non-linearly arranged, micro perforations are

preferred for good tear strength and control, but scoring and linear areas of weakness are possible.

26. Claims 41, 42,44,45,47-49,54,55,58,59,61,62,101 , 102 and, 104 are rejected under 35 U.S.C. 103(a) as being unpatentable over May (US 5725312) in view of Thieman et al. (WO 98/45180).

27. Regarding claims 41,42,44,45,47-49,54,55,58,59,61,101,102,104,May teaches a bag made of a single sheet of multi-laminate film (column 8, lines 35-48 and column 26, line 30-column 27, line 6), as recited in claims 46,47,58,59 , with a fold structure between perforated lines, as recited in claims 54 and 55, of a given width, as recited in claims 48 and 49, and a reclosable fastener having an integral skirt, as recited in claim 42, attached at a distal margin (column 27, lines 48-60, Figure 26 in light of Figures 3,7, 11,19) as recited in claims 41,61,101, 102, and 104, that includes a hermetic peelable seal on the skirt of the fastener, as recited in claims 44 and 45 (items 320,322 in column 23, lines 30-49). However, May teaches the perforations are between the fastener and the fold, and is silent in teaching the fastener is between the perforations and the fold as recited in claims 41,61,101, 102, and 104.

28. Thieman et al., who also teach reclosable bags with a fastener and a fold located between two perforation lines, are relied on as evidence of the conventionality of positioning fastener is between the perforations and the fold (See Figures 7/7a,8 in light of the abstract, Page 4, lines 13-30, and page 6, lines 1-11.)

29. Therefore, it would have been obvious to modify May such that the fastener is between the perforations and the fold, since one would have been substituting one perforation line location for another for the same purpose: to enclose a fastener on a reclosable bag until the initial opening of the bag.

30. Regarding claim 62, May is silent in teaching a barrier web coupled to the distal margin. However, Thieman et al. include two means for providing tamper evidence: (1) perforations on either side of the fold (i.e. Figures 7/7a), as taught by May, and (2) a barrier web coupled to the distal margin (item 40). To combine these two tamper evidence means would have been an obvious matter of design choice, depending on the desired level of tamper evidence sealing. It would have been obvious to combine both perforations on either side of the fold with a barrier web coupled to the distal margin, as recited in claim 62, since these combinations of tamper evident seals would only enhance or increase the effectiveness of the tamper evidence.

31. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over May (US 5725312) in view of Thieman et al. (WO 98/45180) as applied above to claims 41, 42, 44, 45, 47-49, 54, 55, 58, 59, 61, 62, 101, 102 and, 104, further in view of Kanemitsu et al. (US 5335997).

32. May teaches the skirt is integral with the fastener structure, but is silent in teaching coupled per se. Kanemitsu et al., who also teach a reclosable bag with an area of weakness, are relied on as evidence of the conventionality of the fastener being integral with or coupled to a skirt (Abstract, Column 6, lines 26-45). Therefore it would

have been obvious to include a coupled skirt since one would have been substituting one means for attaching a skirt for another for the same purpose.

33. Claims 51-53,56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over May (US 5725312) in view of Thieman et al. (WO 98/45180) as applied above to claims 41, 42,44,45,47-49,54,55,58,59,61,62,101 , 102 and, 104, further in view of Hayashi et al. (US 6074097).

34. May teaches a linear area of weakness comprising perforations, but is silent in a non-linear area of weakness as recited in 51-53 , scoring as recited in claim 56 or micro perforations as recited in claim 57.

35. Hayashi et al also teach reclosable food bags with an area of weakness (Column 20, lines 10-26). Hayashi is relied on as evidence of the conventionality of providing a non-linear area (i.e. not a straight line), as recited in claim 51 for opening a bag (Column 18, lines 31-40, Figure 10). Hayashi et al. teach the preferred non-linear length and width (e.g. 106 in Figure 10), as recited in claims 52 and 53, along with micro-perforations as recited in claim 57, both tear strength and tear control (i.e. the tear follows the same shape as the area of weakness) of the area of weakness is more easily controlled(Column 13, lines 35-Column 14, line 12). Furthermore, Hayashi et al. teaches, alternatively, perforations or scoring (i.e. grooves), as recited in claim 56, may alternatively be used (Column 18, lines 31-40, Figure 10).

36. Therefore, once it was known to include an area of weakness in combination with a reclosable bag, to select any particular type of weakness such as perforations, micro

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perforations, or scoring, linearity, and location on the web, would have been an obvious design choice depending on the desired variable of the desired tear strength and tear control, since Hayashi et al. teach non-linearly arranged, micro perforations are preferred for good tear strength and control, but scoring and linear areas of weakness are possible.

37. Claims 22 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thieman et al. (WO 98/45180) as applied to claims 21, 23,24,41,42,46,48,49,54,55, 61 above, further in view of Boeckmann et al. (US 4846585).

38. Thieman et al. are silent in teaching the areas of structural weakness are hermetic. Boeckmann et al., who also teach a reclosable bag with an opening comprising a male and female track section encompassed by a fold with areas of structural weakness on either side of the fold (Figures 1-5), teaches some products require hermetically sealed bags, but the seal integrity is compromised by the areas of structural weakness. Boeckmann et al. teach providing an additional polymeric layer to seal the areas of structural weakness and provide an hermetic area of structural weakness (See Column 1, line 5 to Column 2, line 18, Column 4, lines 25-40).

Therefore, to modify Thieman et al. and include an hermetic area of structural weakness would have been an obvious design choice depending on the type of product stored in the bag, since Boeckmann et al. teach that it is necessary to provide an hermetic area of structural weakness for some products stored in a reclosable bag.

39. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thieman et al. (WO 98/45180) as applied to claims 21, 23, 24,41,42,46,48,49,54,55, 61 above, further in view of May (US 5725312).

40. Thieman et al. teach the fins include distal margins that face one another (Figures 7/7a,8 in light of the abstract, Page 4, lines 13-30, and page 6, lines 1-11), but are silent in teaching the distal margins are coated with releasable adhesive as recited in claims 25-27. May, who also teaches a reclosable bag with an opening comprising a male and female track section encompassed by a fold with perforations on either side of the fold (column 27, lines 48-60, Figure 26 in light of Figures 3,7, 11,19), is relied on as evidence of providing releasable adhesive to assure a hermetic seal when enclosing products that spoil easily (Column 1, lines 37-58, Figures 4, 8,11,19,20 and e.g. items 320,322 in column 23, lines 30-49). Therefore to further include a peelable seal as recited in claims 25-27 would have been an obvious design choice depending on the type of product stored in the bag, since May teaches providing a peelable seal in conjunction with a reclosable male and female track section will provide a hermetic seal for products that require a sealed environment to prevent spoilage.

41. Claim 28 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thieman et al. (WO 98/45180) as applied to claims 21, 23, 24,41,42,46,48,49,54,55, 61 above.

42. Thieman et al. include three means for providing tamper evidence: (1) perforations on either side of the fold (i.e. Figures 7/7a) ,(2) a line of weakness (i.e. item

61 in Figure 8) between the integral fins (Page 6, lines 1-10), a barrier web coupled to the distal margin (item 40). Although Thieman et al. are silent in teaching the *combination* of the various tamper evidence means, to combine the various tamper evidence means would have been an obvious matter of design choice, depending on the desired level of tamper evidence sealing. It would have been obvious to combine both perforations on either side of the fold with either a line of weakness between the integral fins, as recited in claim 28, or a barrier web coupled to the distal margin, as recited in claim 62, since these combinations of tamper evident seals would only enhance or increase the effectiveness of the tamper evidence.

43. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thieman et al. (WO 98/45180) as applied to claims 21, 23, 24, 41, 42, 46, 48, 49, 54, 55, 61 above, further in view of Kanemitsu et al. (US 5335997).

44. Thieman teaches the skirt is integral with the fastener structure, but is silent in teaching coupled per se. Kanemitsu et al., who also teach a reclosable bag with an area of weakness, are relied on as evidence of the conventionality of the fastener being integral with or coupled to a skirt (Abstract, Column 6, lines 26-45). Therefore it would have been obvious to include a coupled skirt since one would have been substituting one means for attaching a skirt for another for the same purpose.

45. Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thieman et al. (WO 98/45180) as applied to claims 21, 23, 24,41,42,46,48,49,54,55, 61 above, further in view of Kinigakis et al. (US 6007246).

46. Thieman et al. are silent in teaching the line of weakness is across predetermined length of web material. Kinigakis et al., who teach a corner opening in a bag, are relied on as evidence of the conventionality of a line of weakness used to access a reclosable bag opening wherein the line is across a width and length(Abstract, Figures 8-12). Therefore, extending the line of weakness any particular predetermined dimension would have been an obvious result effective variable of the location of the bag opening since Kinigakis et al. teach a diagonal bag opening has a diagonal line of weakness of a predetermined length and width.

47. Claims 51-53,56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thieman et al. (WO 98/45180) as applied to claims 21, 23, 24,41,42,46,48,49,54,55, 61 above, further in view of Hayashi et al. (US 6074097).

48. Thieman et al. teach a linear area of weakness comprising perforations, but is silent in a non linear area of weakness as recited in 51-53 , scoring as recited in claim 56 or micro perforations as recited in claim 57.

49. Hayashi et al also teach reclosable food bags with an area of weakness (Column 20, lines 10-26). Hayashi is relied on as evidence of the conventionality of providing a non-linear area (i.e. not a straight line), as recited in claim 51 for opening a bag (Column 18, lines 31-40, Figure 10). Hayashi et al. teach the preferred non-linear

length and width (e.g. 106 in Figure 10), as recited in claims 52 and 53, along with micro-perforations as recited in claim 57, both tear strength and tear control (i.e. the tear follows the same shape as the area of weakness) of the area of weakness is more easily controlled (Column 13, lines 35-Column 14, line 12). Furthermore, Hayashi et al. teaches, alternatively, perforations or scoring (i.e. grooves), as recited in claim 56, may alternatively be used (Column 18, lines 31-40, Figure 10).

50. Therefore, once it was known to include an area of weakness in combination with a reclosable bag, to select any particular type of weakness such as perforations, micro perforations, or scoring, linearity, and location on the web, would have been an obvious design choice depending on the desired variable of the desired tear strength and tear control, since Hayashi et al. teach non-linearly arranged, micro perforations are preferred for good tear strength and control, but scoring and linear areas of weakness are possible.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
Art Unit 1761
January 22, 2003



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